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## 2011 New Mexico Sub-Chapter S Corporate Income and Franchise Tax Return Form S-Corp

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Please note that dollar rounding must be used when preparing all income tax returns. We also have listed the attachments required for your return to be complete. Each New Mexico General Fund recipient appreciates your cooperation and compliance.

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### FOR MORE INFORMATION ON . . .

- **Profit Corporate Report (filed every other year) and Non-Profit Corporate Report (filed annually), contact:**  
Public Regulation Commission  
P. O. Drawer 1269  
Santa Fe, NM 87504-1269  
(505) 827-4508
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### THIS PACKET CONTAINS:

- S-Corp, Form and Instructions
  - S-Corp-1, Income Taxable to Owners
  - S-Corp-A, New Mexico Apportionment Factors Schedule
  - S-Corp-B, Allocated Non-business Income Taxable to Owners
  - S-Corp-C, Allocated and Apportioned Income Taxed to S-Corporations
  - S-Corp-CR, Tax Credit Schedule
  - S-Corp-EXT, Extension Payment Voucher
  - S-Corp-PV, Income Tax Payment Voucher
  - S-Corp-PV, Estimated Tax Payment Voucher
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### IMPORTANT CHANGES FOR 2011 S CORPORATIONS AND PASS-THROUGH ENTITIES

- A new Form S-Corp is required for Corporations and Limited Liability Companies (LLCs) electing to be taxed as S corporations for federal income tax purposes. S corporations must file a New Mexico *S Corporate Income and Franchise Tax Return (S-Corp)* if the entity is registered to do business in the state, transacts business in, into or from the state, or derives any income from property or employment within the state.
- Pass-through entities doing business in the state must file a New Mexico Information Return for Pass-Through Entities (PTE). This requirement includes entities registered to do business in the state, transacting business

in, into or from the state, or receiving any income from property or employment within the state, and includes any partnership, joint venture, common trust fund, limited association, pool or working agreement, limited liability company or any other combination of persons or interests required to file a federal partnership return.

- Effective January 1, 2011, a pass-through entity means any business association other than:
  - a sole proprietorship,
  - a corporation, limited liability company, partnership or other entity not a sole proprietorship taxed as a corporation for federal income tax purposes for the tax year;
  - a partnership that is organized as an investment partnership in which the partner's income is derived solely from interest, dividends and sales of securities;
  - a single-member limited liability company that is treated as a disregarded entity for federal income tax purposes; or
  - a publicly-traded partnership as defined in Subsection(b) of Section 7704 of the Internal Revenue Code.
- An estate or trust that distributes income to beneficiaries is also a pass-through entity, but files Form FID-1, instead of Form PTE.

### WITHHOLDING AND ADDITIONAL REPORTING REQUIREMENTS FOR PASS-THROUGH ENTITIES

Beginning January 1, 2011, quarterly withholding from owners, members or partners (owners) of a pass-through entity (PTE) is required. PTEs are required to withhold from the owner's share of PTE's net income earned in the quarter at the rate of 4.9%. The withholding is reported on Form RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*, due on or before the 25th day of the month following the close of

**Continue on the next page.**

the calendar quarter in which the net income is earned. The return can be filed and the tax paid online through the Department's web site.

**NOTE: Annual withholding from non-resident owners on Form PTE, is no longer available. All withholding is to be paid quarterly on Form RPD-41355, Quarterly Pass-Through Entity Withholding Tax Return.**

Certain exceptions to the requirement to withhold are allowed, and documentation must be maintained in the PTE's records to establish that the PTE had reasonable cause for not withholding. A complete list of exceptions is provided in the instructions for Form RPD-41355.

A PTE also must submit annual returns to the Department, including details of the net income of each owner and the withholding tax paid on that income. The annual form to be filed with the Department, RPD-41367, *2011 Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, is due at the time the PTE return is due. The Department encourages electronic filing of this annual report. The report is filed separately from the PTE return.

A PTE must also provide each owner sufficient information to enable the owner to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act, with respect to the owner's share of the net income.

A PTE uses Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, to report tax withheld to the owners. The form must be provided to the owners on or before February 15th of the year following the year for which the statement is made. A PTE uses a Schedule K-1 equivalent form to report to the owners, their share of the net income. A Schedule K-1 is not required to be submitted with Form PTE.

NOTE: New Mexico approved tax credits may not be passed to the owners using Form PTE or a Schedule K-1 equivalent form. Refer to the forms and instructions for the tax credit for information on how to pass tax credits to owners.

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## Privacy Notification

The New Mexico Taxation and Revenue Department requires taxpayers to furnish federal employer identification numbers as a means of taxpayer identification. All information supplied electronically by taxpayers is protected using encryption and fire walls. Taxpayer information on returns is protected in accordance with the confidentiality provisions of the Tax Administration Act (NMSA 1978, Section 7-1-8).

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## Legislative Changes

For details about New Mexico tax law changes enacted during 2011, see Publication B-100.23, 2011 Legislative Summary. Legislative summaries are available for each year, providing a brief description of new legislation affecting the Taxation and Revenue Department. Visit our web page and click on "Forms and Publications".

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## Your Electronic Services

- ◆ **Direct Deposit** - Taxpayers due a refund may have their refunds deposited directly into their bank accounts through "Refund Express." See Form PTE.
- ◆ **Pay via credit card or electronic check** - Taxpayers may pay taxes over the Internet with Visa, MasterCard, Discover or American Express cards. A 2.49% convenience fee calculated on the amount of the transaction covers costs that the companies bill the state when you use your card. **You may also pay by electronic check at no charge.** An electronic check authorizes TRD to debit your checking account in the amount and on the date you specify.
- ◆ **Download forms, publications and brochures or ask a question** - Taxpayers may access forms, publications and brochures from our website. You can ask general questions about New Mexico taxes using the e-mail address [policy.office@state.nm.us](mailto:policy.office@state.nm.us), or ask about your tax return at [cit.taxreturnhelp@state.nm.us](mailto:cit.taxreturnhelp@state.nm.us).
- ◆ **New Mexico Taxpayer Access Point: TAP is a secure resource that allows taxpayers to check the status of tax accounts online, make payments, and change their address.** Access our web site and select the Taxpayer Access Point (TAP) link. This resource is currently available for the following tax programs: Personal Income Tax (PIT), Corporate Income and Franchise Tax (CIT), Pass Through Entity (PTE), S Corporate Income and Franchise Tax (S-Corp), Combined Reporting System (CRS), E911 Services Surcharge (911), Combined Fuel Tax (CFT), Cigarette Tax (CIG), Fiduciary Income Tax (FID), Bingo and Raffle Tax (BRT), Conservation Tax (CNS), Gaming Operator Tax (GMO), Gaming MFG and Distributor Tax (GMD), Water Conservation Fee (H2O), OGP Withholding Tax (OGP), PTE Withholding Tax (PTW), Local Liquor Excise Tax (LLQ), Liquor Excise Tax (LIQ), Resource Excise Tax (RES), Severance Tax (SEV), Alternative Fuels Excise Tax (AFD), Tobacco Products Tax (TPT), Telecommunications Relay Service Surcharge (TRS), Weight Distance Tax (WDT), and Workers' Compensation Fee (WKC). **The status of your refund is available through the "Where is my Refund" link** -- for PIT, CIT, S-Corp and CRS tax programs. You will need your Social Security Number (SSN), Federal Employer Identification Number (FEIN) or CRS Identification Number and the amount of refund due.

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# GENERAL INSTRUCTIONS

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**READ THE INSTRUCTIONS CAREFULLY.** They will answer most questions, save time and may save money. You may also want to read publication FYI-350 - Corporate Income and Corporate Franchise Tax, which explains in more detail various aspects of the New Mexico corporate income and franchise tax program. File your return as early as possible. If you have additional questions or want a copy of FYI-350, visit our website at: [www.tax.newmexico.gov](http://www.tax.newmexico.gov), or write to:

New Mexico Taxation and Revenue Department  
**ATTENTION:** Corporate Income and Franchise Tax  
P. O. Box 25127  
Santa Fe, New Mexico 87504-5127

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## ENTITIES REQUIRED TO FILE A NEW MEXICO SUB-CHAPTER S CORPORATE INCOME AND FRANCHISE TAX RETURN

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Corporations and Limited Liability Companies (LLCs) electing to be taxed as S corporations for federal income tax purposes must file a New Mexico *S Corporate Income and Franchise Tax Return* (S-Corp) if the entity is registered to do business in the state, transacts business in, into or from the state, or derives any income from property or employment within the state.

**EXCEPTION:** The following entities are exempt and are not required to file a New Mexico *Sub-chapter S Corporate Income and Franchise Tax Return*:

- insurance companies and reciprocal or inter-insurance exchanges which pay a premium tax to New Mexico;
- rural electric cooperatives established under the Rural Electric Cooperative Act (Sec. 62-15-28 NMSA 1978).

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## ENTITIES REQUIRED TO PAY THE NEW MEXICO FRANCHISE TAX

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All S corporations engaging in business in New Mexico and every domestic or foreign corporation having or exercising its corporate franchise in this state, **whether actively engaged in business or not**, must file a New Mexico *S-Corp Return* and pay the \$50 franchise tax even if no income tax is due. This includes "disregarded" corporations doing business in New Mexico. The only exceptions are:

- corporations exempt from federal income tax under the Internal Revenue Code that have no unrelated

business income;

- insurance companies and reciprocal or inter-insurance exchanges which pay a premium tax to New Mexico, and
- rural electric cooperatives established under the Rural Electric Cooperative Act.

Limited liability companies that are required or elect to file a U.S. Income Tax Return for an S Corporation pay the New Mexico Franchise Tax.

Taxpayers who have no nexus in New Mexico pursuant to P.L. 86-272 are not immune from paying New Mexico Franchise Tax.

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## WHICH RETURN TO FILE

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FISCAL YEAR TAXPAYERS must file a 2011 return for a fiscal year beginning in 2011 and ending in 2012. Use the Form S-Corp applicable to the tax year in which the short-year or fiscal-year begins. For example, if the tax year begins in June 30, 2011, use Form 2011 S-Corp, regardless of the ending date of the tax year.

In general, the federal return that you are required or elect to file determines the New Mexico income tax return that you file.

If your business does not file a New Mexico S-Corp Return, New Mexico may require you to file one of the following forms for New Mexico instead:

- New Mexico *Corporate Income and Franchise Tax Return* (CIT-1),
- New Mexico Information Return for Pass-Through Entities (PTE),
- New Mexico *Personal Income Tax Return* (PIT-1), or

- New Mexico *Fiduciary Income Tax Return* (FID-1).

Each owner of the partnership, limited liability corporation, S corporation or similar business association must include his or her share of the pass-through entity income on the New Mexico personal or corporate income tax return.

A Real Estate Investment Trust (REIT), which does business in New Mexico and files a federal Form 1120-REIT, must file a New Mexico PTE return.

Every entity having income from activities or sources within New Mexico that is required to file a Federal Corporation Income Tax Return or equivalent return must file a New Mexico CIT-1 return. These include all corporations organized under the laws of the State of New Mexico and corporations exempt from federal income tax under the Internal Revenue Code which have unrelated business income.

Most partnerships (excluding "investment partnerships" in which income is derived solely from interest, dividends and sales of securities), or any joint venture, common trust fund, limited association, pool or working agreement, limited liability company or any other combination of persons or interests that is required to file a federal partnership return of income must file a New Mexico PTE return, if any of the entity's income is from New Mexico.

A single-owner LLC or similar organization doing business in New Mexico who is required to or elects to file a federal Form 1040 Schedule C instead of a federal corporate income tax return or a federal pass-through entity return,

must file a New Mexico PIT-1 return. No franchise tax is due.

Estates and trusts are subject to New Mexico personal income tax. The fiduciary for an estate or trust must file Form FID-1.

Each beneficiary of an estate or trust must include his or her share of the estate or trust income on the New Mexico personal or corporate income tax return even if the estate or trust was not required to file Form FID-1.

**NOTE:** All New Mexico Taxation and Revenue Department forms, instructions and information brochures are available on the Department's Internet home page. Our address is: [www.tax.newmexico.gov](http://www.tax.newmexico.gov). Forms are also available at any New Mexico Taxation and Revenue Department district office or you may request forms by calling 505-827-2206 (not a toll-free number).

**WITHHOLDING AND ADDITIONAL REPORTING REQUIREMENTS FOR PASS-THROUGH ENTITIES**

Beginning January 1, 2011, quarterly withholding from owners, members or partners (owners) of a pass-through entity (PTE) is required. PTEs are required to withhold from the owners share of PTEs net income earned in the quarter at the rate of 4.9%. The withholding is reported on Form RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*, due on or before the 25th day of the month following the close of the calendar quarter in which the net income is earned. The return can be filed and the tax paid online through the Department's web site.

**NOTE: Annual withholding from non-resident owners on Form PTE, is no longer available. All withholding is to be paid quarterly** on Form RPD-41355, *Quarterly Pass-Through Entity Withholding Tax Return*.

Certain exceptions to the requirement to withhold are allowed, and documentation must be maintained in the PTE's records to establish that the PTE had reasonable cause for not withholding. A complete list of exceptions is provided in the instructions for Form RPD-41355.

A PTE also must submit annual returns to the Department, including details of the net income of each owner and the withholding tax paid on that income. The annual form to be filed with the Department, RPD-41367, *2011 Annual Withholding of Net Income From a Pass-Through Entity Detail Report*, is due at the time the PTE return is due. The Department encourages electronic filing of this annual report. The report is filed separately from the PTE return.

A PTE must also provide each owner sufficient information to enable the owner to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act, with respect to the owner's share of the net income.

A PTE uses Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, to report tax withheld to the owners. The form must be provided to the owners on or before February 15th of the year following the year for which the statement is made. A PTE uses a Schedule K-1 equivalent form to report to the owners, their share of the net income. A Schedule K-1 is not required to be submitted with Form PTE.

**NOTE:** New Mexico approved tax credits may not be passed to the owners using Form PTE or a Schedule K-1 equivalent form. Refer to the forms and instructions for the tax credit for information on how to pass tax credits to owners.

New Mexico's law says every person who has income from New Mexico sources and who is required to file a federal income tax return must file a personal income tax return in New Mexico. This includes non-residents who have income from wages, rents,

royalties, businesses, estates...every New Mexico source. Even foreign nationals and persons who reside in states that do not have income taxes must file here when they have a federal filing requirement and have income from any New Mexico source whatsoever.

**NOTE: A non-resident owner's and remittee's requirement to file a New Mexico personal income tax return is met when the PTE or remitter withholds from oil and gas proceeds and/or pass-through entity withholding and the owner or remittee has no other income from New Mexico sources.**

**REQUIRED ATTACHMENTS TO FORM S-CORP**

**NOTE:** We can process your return more quickly if you submit your forms and attachments in the following sequence:

- **S-Corp Form:** *New Mexico Sub-Chapter S Corporate Income and Franchise Tax Return.*
- **S-Corp-1:** *Income Taxable to Owners*, computing the total of New Mexico taxable income applicable to all owners.
- **S-Corp-A:** *New Mexico Apportionment Factors*, if the entity has income from sources both inside and outside New Mexico.
- **S-Corp-B:** *Allocated Non-business Income Taxable to Owners*, if the entity has non-business taxable income.
- **S-Corp-C:** *Allocated and Apportioned Income Taxed to S Corporations*, if the entity is an S corporation with federal taxable income.
- **S-Corp-CR, if applicable:** *Tax Credit Schedule*, and required at-

**CORPORATE INCOME TAX RATES**

<u>Net Taxable Income</u>	<u>Tax</u>
Not over \$500,000.....	4.8% of net taxable income
Over \$500,000 but not over \$1,000,000.....	\$24,000 plus 6.4% of the excess over \$500,000
Over \$1,000,000.....	\$56,000 plus 7.6% of the excess over \$1,000,000

tachments.

- **Federal Form 1120S, pages 1 through 4.**
- **Other attachments** as required by instruction.

**NOTE: If any of these forms are omitted when required, the New Mexico return is incomplete.**

If your return shows a balance due, complete **Form S-Corp-PV, Payment Voucher**, to include with your check or money order.

Use **Form 2011 S-Corp-EXT, Extension Payment Voucher**, if you have obtained a federal automatic extension or a New Mexico extension and a payment towards the tax liability is made to avoid the accrual of interest.

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#### **Other Forms or Attachments You May Have to File**

A copy of the **approved federal extension or the approved New Mexico extension** if the return is filed after the original due date of the return. If a copy is omitted, a late-filing penalty will be assessed.

**All annual information returns and withholding statements.** Attach a copy of all annual information returns and withholding statements showing income and New Mexico income tax withheld, if reporting amounts withheld on lines 12 or 13, Form S-Corp. Attach Forms RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, federal Form 1099Misc or equivalent, or New Mexico Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*.

**IMPORTANT:** To receive proper credit for withholding, all annual statements must be issued to the entity filing the New Mexico income tax return.

**Federal Forms and Schedules.** The Department may require you to furnish a true and correct copy of your federal tax return and attachments.

To claim the renewable energy production tax credit, attach **Form RPD-41227, Renewable Energy Production Tax Credit Claim Form**, and enter

the amount applied to the tax due on Schedule S-Corp-CR, and the amount to be refunded on line 21, Form S-Corp.

See *Available Credits* on page 14 for a description of the **attachments required to claim any tax credits** reported on Schedule S-Corp-CR. For more information on business-related credits, also see publication FYI-106, *Claiming Tax Credits for CRS Taxes & Business-Related Income*, download the claim forms from the TRD website at [www.tax.newmexico.gov](http://www.tax.newmexico.gov) or call (505) 476-3683.

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#### **PAYMENT OF THE S-CORP INCOME AND FRANCHISE TAXES**

If your return shows a liability due, complete Form S-Corp-PV, *Payment Voucher*, and attach it to your check or money order. Mail the return, payment voucher S-Corp-PV, payment and required attachments to:

**Taxation and Revenue Department  
P.O. Box 25127  
Santa Fe, New Mexico 87504-5127**

**NOTE:** When printing a payment voucher from the Internet or from a software product, the printer setting "Page Scaling" should be set to 'none' to prevent resizing. The payment vouchers are processed through high-speed scanners, so it is important that you do not cut or resize the bottom portion of the payment voucher in any way. If the payment voucher has a scanline, do not write in the area around the scanline, which is located within the bottom 1-1/2 inch of the voucher.

Make your check or money order payable to the Taxation and Revenue Department. Do not mail cash to pay your corporate income and franchise taxes.

To avoid misapplication of funds write "2011 S-Corp" and your federal employer identification number on the check or money order.

A check that is not paid by the financial institution on which it is drawn does not constitute payment, and a minimum penalty of \$20 is assessed in addition to other applicable penalties and interest.

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#### **DUE DATE**

For S corporations that file on a calendar-year basis, the 2011 New Mexico S-Corp Return is due on or before March 15, 2012, together with payment of taxes due. For fiscal-year filers, the return is due on the fifteenth day of the third month after the end of the fiscal year.

A New Mexico income tax return and tax payment are timely if the United States Post Office postmark on the envelope bears a date on or before the due date. If the due date falls on a Saturday, Sunday, state or national legal holiday, the return is timely if the postmark bears the date of the next business day. Delivery through a private delivery service is timely if the date recorded or marked by the private delivery service is on or before the due date.

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#### **EXTENSION OF TIME TO FILE**

TRD accepts an extension of time granted by the Internal Revenue Service if a copy of the automatic or approved federal extension accompanies the S-Corp return at the time of filing.

If the entity needs an extension of time to file the New Mexico Form S-Corp but has not obtained a federal extension, or if additional time to file the New Mexico return is needed beyond the federal extension date, the entity should request an extension by letter or by filing New Mexico **Form RPD-41096, Extension of Time to File**, on or before the due date of the return.

To make an extension payment by mail or delivery, you will need to complete Form S-Corp-EXT, and submit the payment with this form.

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#### **EXTENSION PAYMENT**

To make an extension payment by mail or delivery, you will need to complete Form S-Corp-EXT, Payment Voucher. An extension payment is made when either a federal automatic extension or a New Mexico extension has been obtained, and a payment towards the tax liability is made to avoid the accrual of interest. An extension of time to file

your return does not extend the time to pay. If tax is due, interest continues to accrue. If you expect to owe more tax when you file your 2011 return, make a payment using the 2011 S-Corp-EXT payment voucher and avoid the accrual of interest on that amount.

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## PENALTIES AND INTEREST

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**Interest:** Interest accrues on tax that is not paid on or before the due date of your return even if you receive an extension of time to file. *Interest is a charge for the use of money and by law cannot be waived.* Prior to January 1, 2008, interest was calculated at the statutory rate of 15% per year, computed on a daily basis. Beginning January 1, 2008, interest is computed on a daily basis, at the rate established for individual income tax purposes by the U.S. Internal Revenue Code (IRC).

The IRC rate changes quarterly. The IRC rate for each quarter is announced by the Internal Revenue Service in the last month of the previous quarter. The annual rate for the 2011 tax year, ranged between 3% and 4%. At the time these instructions were sent to the printer, the rate for the first quarter of 2012 had not been announced. The annual and daily interest rates for each quarter will be posted on our website at [www.tax.newmexico.gov](http://www.tax.newmexico.gov).

Important: You do not need to figure the amount of penalty or interest due on your return. Once your principal tax liability is paid, penalty and interest stops accruing. The Department will bill you for any penalty or interest due.

If you are due a refund, you may be entitled to interest on your overpayment at the same rate charged for underpayments, but only under certain conditions. The Department shall pay no interest if the refund is made within 55 days of the date of the claim for refund, if the interest is less than \$1 or if your return cannot be processed. For processing to take place, your return must show your name, address, federal employer identification number or public regulation commission number, signature and the information needed to mathematically verify your tax liability. The CRS identification number should

also be included unless the entity is not required to have one.

If the entity does not pay its New Mexico income or franchise tax when due, interest is assessed. **Interest accrues even if the entity obtains an extension of time to file a return.** The formula for calculating interest is:

$$\text{Tax due} \times \text{the daily interest rate for the quarter} \times \text{number of days late} = \text{interest due.}$$

**Negligence Penalty for Late Filing or Late Payment:** If a return is not filed or tax remains unpaid when due because of negligence or disregard of rules or regulations, but without intent to defraud, the entity is liable for a penalty of 2% of the tax due for each month, or partial month, from the date the return was due, not to exceed 20% of the amount of tax due. The penalty does not apply if there is an extension of time and the tax is paid by the extended due date. Calculate this penalty by multiplying the tax due by 2% times the number of months (including any partial month as a full month) past the due date or extended due date.

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## ESTIMATED TAX PAYMENTS

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Every S corporation may be required to pay estimated corporate income tax if its tax after applicable credits is \$5,000 or more in the current year. Form S-Corp-ES is used for making estimated payments. See instructions for Form RPD-41287, *2011 Calculation of Estimated Corporate Income Tax Penalty and Interest on Underpayment*, for information on how to compute the underpayment penalty and interest.

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## AMENDED RETURNS

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When amending Form S-Corp, submit an amended return on Form S-Corp for the year being amended and check the "amended" box. Attach all required schedules. NOTE: If you filed Form PTE in a prior year, amend the Form PTE applicable to the tax year to be amended.

If additional tax is due, send payment for the full amount, including interest calculated from the date the original

return was due and any applicable penalty. Attach Form S-Corp-PV.

If the New Mexico amended return reports changes as the result of filing an amended federal return, attach copies of the applicable federal forms and schedules. In all other cases, attach an explanation of the changes. If the New Mexico amended return shows changes as the result of a Revenue Agent Report (RAR), the changes must be reported within 90 days of the date the federal adjustments are final. Attach a copy of the RAR.

NOTE: Generally, you do not need to attach a copy of the previously filed New Mexico form as backup for the amended return. If you do attach a copy of the New Mexico form as backup, write "DO NOT PROCESS" across the face of the return.

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## LINE INSTRUCTIONS FOR COMPLETING FORM S-CORP

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**Computerized schedule(s) WILL NOT be accepted in lieu of completing the appropriate forms. All applicable line items on Form S-Corp and Schedules S-Corp-1, S-Corp-A, S-Corp-B, S-Corp-C and S-Corp-CR, and federal Form 1120S, pages 1 through 4 must be completed for the return to be processed.**

NOTE: References to federal form line numbers correspond to the most recent federal forms available as of the date of this printing. If the references do not correspond to the federal form, use the applicable line from the federal form for the item described.

Round all dollar amounts to the nearest whole dollar.

Complete the taxpayer information at the top of Form S-Corp. Type or print the correct name, address, ZIP code and identification numbers in the spaces provided. Indicate if the return is an original or amended return by marking the appropriate box.

If the due date has been extended, **write in the extended due date.** A copy of the extension must be attached to the return.

Enter the **NAICS (North America Industrial Classification System) Code**. The business activity code reported for New Mexico filing purposes will be the same as reported for federal purposes. If you don't know your NAICS code, refer to the instructions for your federal return. Federal forms and instructions can be downloaded from the IRS website, [www.irs.gov](http://www.irs.gov).

NOTE: The Department cannot process a return without the Federal Employer Identification Number (FEIN). Failure to provide the FEIN will result in processing delays and may cause the return to be rejected.

If the entity does not have a New Mexico CRS identification number, an application for a New Mexico CRS identification number, Form ACD-31015, *Application for Business Tax Identification Number*, may accompany the tax return when filed. If the entity does not require a New Mexico CRS identification number because the entity has no gross receipts, withholding or compensating tax due, the New Mexico CRS identification number may be left blank.

Fiscal-year or short-year filers should enter beginning and ending dates (month and year only). No entry is required for calendar-year filers.

### Complete Questions A through F.

**Question F. Immune from Nexus.** If you had no nexus in New Mexico (your New Mexico activities were immune from New Mexico corporate income tax under P.L. 86-272) for the 2011 tax year, enter zero on line 1 and mark the box on question F. You must also complete and attach Schedule S-Corp-A.

**Lines 1-4.** These lines are to be used by an S corporation with income subject to federal tax. The S corporation computes New Mexico income tax on lines 1 through 4.

**Line 2. Tax on amount on line 1.** Calculate tax due on line 2 using the taxable income figure on line 1 and the rate table on page 4 of these instructions. See the instructions to Question F, if you had no nexus in New Mexico (your New Mexico activities were im-

mune from New Mexico corporate income tax under P.L. 86-272) for the 2011 tax year.

**Line 3. New Mexico percentage.** Enter 100% or complete schedule S-Corp-C. Enter the percentage from line 5 of S-Corp-C.

**Line 4. New Mexico income tax.** Multiply line 2 by line 3. If you qualify to file Schedule CC because you have no business activities in New Mexico other than sales, you do not own or rent real estate in New Mexico, and you have annual gross income from sales in or into New Mexico of \$100,000 or less, then enter only the amount from line 3 of **Schedule CC**.

**Line 5. Total tax credits claimed against the income tax liability on line 4.** If any of the tax credits described in the following paragraph, complete Schedule S-Corp-CR and attach the applicable form(s), statements or other required back-up. Enter the sum of the non-refundable portion of the tax credits claimed on line 19, Schedule S-Corp-CR, on line 5, Form S-Corp. The supporting documentation required to claim any of the tax credits is described in the section *Available Credits*, on page 14 of these instructions, and must accompany the return, or the claim for the credit will not be allowed.

To calculate the amount that may be claimed for any tax year, refer to the claim form or supporting instructions for the tax credit. The sum of credits claimed on Schedule S-Corp-CR may not exceed the income tax claimed on line 4, Form S-Corp.

An S corporation with income subject to federal income tax may be eligible for the following corporate income tax credits: Corporate-supported Child-Care Credit, Cultural Property Preservation Credit, Business Facility Rehabilitation Credit, Intergovernmental Business Tax Credit, Rural Job Tax Credit, Technology Jobs "Additional" Tax Credit, Electronic-Card Reading Equipment Tax Credit, Job Mentorship Tax Credit, Land Conservation Incentives Credit, Affordable Housing Tax Credit, Blended Biodiesel Fuel Tax Credit, Sustainable Building Tax

Credit, Advanced Energy Tax Credit, Agricultural Water Conservation Tax Credit, Geothermal Ground-Coupled Heat Pump Tax Credit, Agricultural Biomass Income Tax Credit. **These credits may be claimed against corporate income tax.**

You may also claim on this form any portion of approved Film Production Tax Credit or Renewable Energy Production Tax Credit that is claimed against the income tax liability due on this return. Any refundable portion of the Renewable Energy Production Tax Credit is claimed on line 21 of Form S-Corp. The refundable portion of the Film Production Tax Credit is claimed on line 23, Form S-Corp.

For more information on business-related credits, see also Publication FYI-106, *Claiming Tax Credits for CRS Taxes & Business-Related Income*. Download related forms from the TRD website at [www.tax.newmexico.gov](http://www.tax.newmexico.gov) or call (505) 476-3683 or your local district office.

**Line 7. Franchise Tax.** Every domestic or foreign entity, inclusive of any qualifying subsidiary, taxed as a corporation must pay the \$50 franchise tax if it:

- transacts business in, into or from New Mexico;
- derives income from any property or employment within this state; or
- has or exercises its corporate franchise in New Mexico, whether engaged in active business or not.

**Corporations electing to be treated as S corporations are not exempt from franchise tax.**

The \$50 franchise tax is due for each tax year, including short years. The franchise tax may not be prorated based on a short-year return.

Taxpayers who have no nexus in New Mexico pursuant to P.L. 86-272, are not immune from paying New Mexico Franchise Tax.

**REMINDER: It is your responsibility to comply with all additional filing requirements imposed by the New Mexico Public Regulation Commission. For information call (505) 827-**

4508 or visit their website at [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us).

**Line 11.** Enter the total amount of all extension payments and amounts applied from the prior year's return. Check the appropriate box(es) indicating the source of the payment(s).

**Line 12. New Mexico income tax withheld from oil and gas proceeds.** Enter the total of all New Mexico income tax withheld from oil and gas proceeds as shown on your annual withholding statements, 1099Misc, or Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*. Be sure to include a copy of the forms with your S-Corp return.

An entity that has had tax withheld cannot pass a withholding statement directly to any other taxpayer. Generally, the recipient must file and report the tax withheld on its New Mexico income tax return. However, if the recipient is also a remitter the tax withheld on the oil and gas proceeds may be passed to the remitees by issuing the remitees an annual withholding statement, Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*. The remitees may then claim the withholding on their income tax return.

**Line 13. New Mexico income tax withheld from pass-through entities.** Enter the total of all New Mexico income tax withheld from pass-through entities as shown on your annual withholding statements, or Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*. Be sure to include a copy of the forms with your S-Corp return.

An entity that has had tax withheld cannot pass a withholding statement directly to its owners, members, partners or beneficiaries (owners). Generally, the recipient must file and report the tax withheld on its New Mexico income tax return. However, if the recipient is also a pass-through entity, the tax withheld may be passed to the owner of the recipient by issuing the owner an annual withholding statement, Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*. The owner may then claim the withholding on their income tax return.

**Line 14. Amount from lines 12 and 13 passed to owners on Form 1099Misc or RPD-41367.** Enter the amount of tax withheld from lines 12 and 13, which was subsequently passed on to the S corporation owners. An S corporation reports withholding that is passed to the owners by issuing the owners Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, Form 1099Misc or a pro-forma Form 1099Misc. The owners may then take credit for the withholding on their corporate or personal income tax return.

**Line 15. Total payments and tax withheld.** Subtract line 14 from the sum of lines 11 through 13 to compute the total payments and tax withheld.

**Line 16. Tax due.** If line 10 is greater than line 15, subtract line 15 from line 10 and enter the difference on line 16. This is the amount of tax you owe.

**Line 17. Penalty.** Add penalty if you file late and owe tax or you do not pay the tax on or before the date the return is due. Calculate penalty by multiplying the unpaid amount on line 16, Form S-Corp, by 2% then by the number of months or partial months for which the payment is late, not to exceed 20% of the tax due or a minimum of \$5, whichever is greater. You may leave this line blank if you wish the Department to compute the penalty for you. The Department will send you a bill.

**Line 18. Interest.** Add interest if the amount of tax due on line 16 was not paid by the original due date, **even if an extension of time to file was obtained**. You may leave this line blank if you wish the Department to compute the interest for you. The Department will bill you for any interest due.

Important: Once your principal tax liability is paid, penalty and interest stops accruing.

Beginning January 1, 2008, interest is computed on a daily basis, at the rate established for individual income tax purposes by the U.S. Internal Revenue Code (IRC). The IRC rate changes quarterly. The IRC rate for each quarter is announced by the Internal Revenue Service in the last month of

the previous quarter. The annual and daily interest rate for each quarter will be posted on our website at [www.tax.newmexico.gov](http://www.tax.newmexico.gov).

The formula for calculating daily interest is:

$$\text{Tax due} \times \text{the daily interest rate for the quarter} \times \text{number of days late} = \text{interest due.}$$

**Line 20. Overpayment.** If line 15 is greater than line 10, subtract line 10 from 15 and enter the difference on line 20. This is your overpayment. All or part of an overpayment on an original return may be applied to the 2012 liability. Indicate the amount of overpayment you want applied to your 2012 liability on line 20a, and/or the amount of overpayment you wish to be refunded on line 20b.

**Line 21. Refundable portion of the renewable energy production tax credit claimed.** Enter the amount of approved refundable renewable energy production tax credit claimed on Form RPD-41227, *Renewable Energy Production Tax Credit Claim Form*, that you wish to have refunded to you. Any portion of the credit to be applied to the tax due on this return must be entered on Schedule S-Corp-CR. For a description of the credit, see Available Credits on page 14 of these instructions.

**Line 22. Total refund of overpaid tax and refundable credit due to you.** Enter the sum of lines 20b and 21. This is your total refund of overpaid tax and refundable credit due to you.

**Line 23. Refundable portion of the film production tax credit claimed.** Enter the amount of approved film production tax credit that you wish to have refunded to you. You must also complete Schedule S-Corp-CR, entering the total amount that you have been approved for, and any portion of the credit to be applied to the tax due on this return. For a description of the credit and instructions for completing Schedule S-Corp-CR, see *Available Credits* beginning on page 14 of these instructions.

NOTE: The amount of film produc-

tion tax credit you may claim against your tax due on this return and the amount that you may receive as a refund (based on your claim for the film production tax credit on line 23, of the Form S-Corp) are subject to certain limitations governing the payment of film production tax credit claims. See the instructions for the film production tax credit claim form for details regarding these limitations and how your claim may be impacted.

### Refund Express

If you request an amount to be refunded to you on line 22, you may wish to have your tax refund deposited directly into your bank account through Refund Express. To choose Refund Express, complete the "Refund Express" portion of Form S-Corp. All fields are required. Complete the bank routing number, the account number, and you *must* mark the appropriate box to indicate the type of account. Failure to complete all fields will cause your Refund Express request to be denied, and the Department will mail you a paper check.

See the instructions for the film production tax credit claim form for information regarding choosing refund express for the refundable portion of the film production tax credit on line 23.

### Important Changes Affecting Refund Express - Direct Deposit

A direct deposit of your refund, "Refund Express", may not be made to a bank account located at a financial institution outside the territorial jurisdiction of the United States. In order to comply with new federal banking rules, anyone wishing to have their refund directly

deposited into their account must answer an additional question when completing the Refund Express portion of their return. If you do not answer the question, your refund will be mailed to you in the form of a paper check. If you answer the question incorrectly, your refund may be delayed, rejected or frozen by the National Automated Clearing House Association (NACHA) or the Office of Foreign Assets Control (OFAC). The question asks whether the refund will go to or through an account located outside the United States. The question also warns you that if the answer is "yes", you should not choose the Refund Express method of delivering your refund. Your options are to use a different bank account or to leave the Refund Express portion of your return blank and a paper check will be mailed to the address on the return.

A financial institution is located within the territorial jurisdiction of the United States if it is:

- located within the United States;
- located on a United States military base; or
- located in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico or the U.S. Virgin Islands.

The Department will mail you a paper check if your bank does not accept your Refund Express information.

Refund express is available for deposits to the taxpayer's account *only*. **Taxpayers may not request the funds to be deposited into the account of another payee.**

TRD is not responsible for the misapplication of a direct deposit refund that

is caused by the error, negligence or malfeasance on the part of the taxpayer. Verify that you enter the correct bank information.

### Why Use Refund Express?

- Avoid delays that may occur in mailing a check. Refund Express does not guarantee that you will receive your refund check earlier, however - only that when the check is issued, it will reach the bank more quickly.
- Payment is more secure. There is no check to get lost.
- More convenient. No trip to the bank to deposit your check.
- Saves tax dollars. A refund by direct deposit costs less than a check.

### What is the Routing Number?

The routing number is for bank identification and **must be nine digits**. If the first two digits are not 01 through 12 or 21 through 32, the system will reject the direct deposit and you will receive a check. On the sample check below, the routing number is 211500151.

Your check may state that it is payable through a bank different from the financial institution where you have your checking account. If so, do not use the routing number on that check. Instead, contact your financial institution for the correct routing number to enter on this line.

### Entering Your Account Number

Your account number can be up to 17 characters. Include hyphens, but omit spaces and special symbols. Enter the number from left to right. Leave unused boxes blank. On the sample check below, the account number is 2015551517. **Do not** include the check number.

You *must* indicate the **type of account**. Enter an "X" in the "checking" box if the account is a checking account or in the "savings" box if the account is a savings account. This field is required.

**Caution:** Verify that the information you enter is correct and that your financial institution will accept a direct deposit made payable to the name on the

The image shows a sample check form with the following details:

- Payor:** S CORPORATION'S NAME, 123 Main Street, Anyplace, NM 87000.
- Payee:** ANYPLACE BANK, Anyplace, NM 87000.
- Routing Number:** 211500151 (circled and labeled "Routing Number").
- Account Number:** 2015551517 (circled and labeled "Account Number").
- Check Number:** 1540 (circled and labeled "Do not include the check number").
- Amount:** \$ 1540 (written as "1540" in the top right corner).
- Other:** A "SAMPLE" watermark is diagonally across the center. The bottom of the check has fields for "For" and "DOLLARS".

S-Corp return. **NOTE:** Taxation and Revenue is not responsible if a financial institution refuses a direct deposit.

You must answer whether the funds for this payment will go to or through an account located outside the territorial jurisdiction of the United States. The required response is "No". New federal banking rules require that you answer this question. A refund sent to an account located at a financial institution outside the territorial jurisdiction of the United States, even if the payment passes through a U.S. financial institution, may not be made using this refund option. You may select a different bank account or you may leave the *Refund Express* portion of your return blank and a paper check will be mailed to you.

A financial institution is located within the territorial jurisdiction of the United States if it is:

- located within the United States;
- located on a United States military base; or
- located in American Samoa, Guam, the Northern Mariana Islands, Puerto Rico or the U.S. Virgin Islands.

See *Important Changes Affecting Refund Express - Direct Deposit* on page 9.

### Collection of Debts from Your Refund

The Department will keep all or part of your overpayment if you owe other taxes to the Department. We will apply that amount to the liability and notify you.

The law also requires the Department to transfer all or part of your overpayment if you owe amounts due under the Unemployment Compensation Law or the Workers' Compensation Administration Act. Any amount over your liability and debt will be refunded.

**SIGNATURE.** The return must be signed and dated by an officer, member or partner of the corporation. Complete all information, including a phone number and e-mail address.

Any person, other than an employee of the corporation, preparing the return for compensation must also sign and

date the return. A preparer other than an employee of the corporation must enter the paid preparer's identifying information in the section, "*Paid preparer's use only*", next to the taxpayer's signature. Enter the preparer's New Mexico CRS identification number, if the preparer has one, and the Federal Employer Identification Number (FEIN), if applicable. All paid preparers must enter the preparer's social security number (SSN) or Preparer's Taxpayer Identification Number (PTIN).

An improperly signed or unsigned return will be considered invalid for filing purposes, and penalty and interest may be assessed.

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### SCHEDULE S-Corp-1 LINE INSTRUCTIONS

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#### LINES 1-12. COMPUTATION OF NET INCOME TAXABLE TO OWNERS

**LINE 1. ORDINARY INCOME (LOSS) FROM FEDERAL FORM 1120S, SCHEDULE K.** Enter the ordinary income or loss as recognized from federal tax return Form 1120S, Schedule K.

**LINE 2. OTHER INCOME (LOSS) FROM FEDERAL FORM 1120S, SCHEDULE K.** Except for guaranteed payments to partners and health insurance payments made on behalf of the partners or partners' dependents, enter the summation of all other income or losses recognized on federal tax return Form 1120S, Schedule K.

**LINE 3. INTEREST INCOME FROM MUNICIPAL BONDS (EXCLUDING NEW MEXICO BONDS).** Enter interest income from non-New Mexico state and local bonds not subject to federal income tax under IRC Section 103.

**LINE 5. INTEREST FROM U.S. GOVERNMENT OBLIGATIONS OR FEDERALLY TAXED NEW MEXICO BONDS.** Interest or dividend income from U.S. government obligations is deductible from the corporation's taxable income only if, and to the extent that, it was included in taxable income on line 1. Expenses related to income from U.S. obligations must be subtracted, and the net amount entered.

**NOTE:** Income from Fannie Mae, Ginnie Mae, Freddie Mac and other U.S. guarantee entities is not deductible. Income from repurchasing agreements of U.S. obligations (REPOs) is not deductible. Interest on notes issued by Federal Home Loan Bank obligations are deductible, but not dividends issues by the Federal Home Loan Bank. That portion of income paid by mutual funds, unit investment trusts, and simple trusts which is derived from investments in U.S. obligations may be deducted.

Interest income for bonds issued by the State of New Mexico or its political subdivisions may also be deducted on this line to the extent that income was included in federal taxable income.

#### LINE 6. ALLOWABLE DEDUCTIONS FROM SCHEDULE K.

Except for health insurance payments made on behalf of the partners or partners' dependents, enter the allowable deductions recognized on the federal tax return Form 1120S, Schedule K. Neither net operating loss carryover nor oil and gas depletion deductions are allowed to be claimed at the entity level on the S-Corp return.

**LINE 7. ALLOCATED INCOME.** Enter the total allocated income from S-Corp-B, column 1, line 8, if applicable.

**LINE 9. AVERAGE NEW MEXICO PERCENTAGE.** Enter the Average New Mexico Percentage from S-Corp-A, line 5.

**LINE 11. NEW MEXICO ALLOCATED INCOME.** Enter New Mexico allocated income from S-Corp-B, column 2, line 9, if applicable.

**LINE 12. NEW MEXICO TAXABLE INCOME.** Enter the sum of lines 10 and 11 here.

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### SCHEDULE S-Corp-A LINE INSTRUCTIONS

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#### LINES 1 - 5. APPORTIONMENT OF INCOME

S-Corp-A must be used by an entity to apportion its income from the entity's regular trade or business activities when income is derived from both inside

and outside New Mexico.

Complete lines 1 through 5 of S-Corp-A.

Calculate each percentage to four decimal places (example, 22.4653%).

The average percentage on line 5 must be supplied to all owners of the entity. Also enter this percentage on S-Corp-1, line 9.

All filers who have business activity outside New Mexico, including filers:

- who have no nexus in New Mexico;
  - whose activities in New Mexico are immune from corporate income tax under P.L. 86-272, and
  - who have no business activity in New Mexico during the tax year,
- must complete Schedule S-Corp-A in its entirety in order for your return to be processed.

On lines 1 through 5, columns 1 and 2, all entries must be either a positive number or a zero. Column 1 must be completed to compute the factors. Negatives are not allowed. For the sales factor only, if you have either a federal taxable income or loss, you must have a positive number in the denominator (Column 1, Gross Receipts line) of the sales factor.

**“Apportionable income” means income arising from transactions and activities in the regular course of an entity’s trade or business. Apportionable income includes income from both tangible and intangible property if the acquisition, management or disposition of the property constitutes integral parts of the entity’s regular trade or business. It includes investment income related to or used in the entity’s overall business operations. The following sources of income are considered apportionable income and must be included:**

- Dividend income from the investment of working capital or dividend income from an investment which is functionally connected to the entity’s trade or business.
- Interest income from the investment of working capital, or interest in-

come from capital investments used in the overall business operations, or interest income from an investment which is functionally connected to the entity’s trade or business.

- Royalty income and fees from patents, copyrights, franchises, trademarks and licenses developed in the regular course of the entity’s trade or business, or royalty income and fees from a product or mineral interest used in the regular course of the entity’s trade or business.
- Rental or subrental income from property purchased, leased or used in the regular course of the entity’s trade or business.
- Gains or losses from the sale of assets used in the regular course of the entity’s trade or business or assets sold which had been treated as business assets in prior years.
- Income from a partnership or non-corporate entity if held within the regular course of the corporation’s trade or business.

**Line 1. Property Factor.** This factor is a percentage determined as follows:

**Divide:** The average value of the real and tangible personal property owned or rented and used in New Mexico during the tax year to produce apportionable income (column 2)

**By:** The average value of all real and tangible personal property owned or rented everywhere and used during the tax year to produce apportionable income (column 1). If the percentage is negative, enter zero.

Property shall be valued according to the following rules:

Inventory shall be valued according to the valuation method used for federal income tax purposes.

Value property owned during the tax year at its original cost before the allowance for depreciation amount at the time of acquisition by the taxpayer and adjusted by subsequent capital additions, improvements and partial dispositions.

Value property which was rented from others at eight (8) times the net annual rental rate. The net annual rate is the annual rent paid less any annual rent received from subrentals of the same property. If property owned by others is used by the entity at no charge or rented by the entity at a nominal rate, the net annual rental rate is determined on the basis of a reasonable market rental rate for the property.

Determine the average value of property by adding the total value of property held by the taxpayer at the beginning of the tax period to the total value of property held at the end of the tax period. Divide by two.

A taxpayer may be required to compute an average value on a monthly basis if the Department determines that a monthly average is necessary to correctly reflect the average value of the taxpayer’s property.

**Line 2. Payroll Factor.** This factor is a percentage determined as follows:

**Divide:** The total amount paid as compensation to employees in New Mexico during the tax year (column 2)

**By:** The total amount paid as compensation to employees everywhere during the tax year (column 1).

“Compensation” means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services. Only amounts paid directly to employees are included in the payroll factor. “Employees” include leased employees where the taxpayer is considered an employer for payroll tax purposes, but “employees” are not independent contractors to whom the taxpayer issues federal Form 1099.

Only compensation that is attributable to business operations subject to apportionment is included in the payroll factor.

Compensation of any employee whose primary activities relate to the production of non-business income is excluded from the payroll factor, but may be included as a related expense of the allocated activity.

**Line 3. Sales Factor.** This factor is a percentage determined as follows:

**Divide:** The total gross receipts attributable to New Mexico during the tax year, excluding returns, allowances and allocated income (column 2)

**By:** The total gross receipts everywhere during the tax year, excluding returns, allowances and allocated income (column 1). If the percentage is negative, enter zero.

“Gross receipts” means all income earned from transactions and activities in the regular course of business, including income from licensing of intangible personal property.

Sales of tangible personal property are New Mexico sales if:

- A. the property is delivered or shipped to a purchaser, other than the United States government, within the state regardless of the F.O.B. point or other conditions of the sale, or
- B. the property is shipped from an office, store, warehouse, factory or other place of storage in this state and
  - 1. the purchaser is the United States government, or
  - 2. the taxpayer is not taxable in the state of the purchaser.

Sales other than sales of tangible personal property are New Mexico sales if:

- A. the income-producing activity was performed in New Mexico, or
- B. the income-producing activity was performed both inside and outside New Mexico, but a greater proportion was performed within New Mexico than in any other single state (the proportion shall be determined by the cost of performance in each state),
- C. the gross receipts were from the rental, lease, licensing or any other use of either real or tangible personal property during the time the property was in New Mexico, or
- D. the gross receipts were from the performance of personal services in New Mexico.

**Lines 4, 4a and 5. Total Factors.** New Mexico uses an evenly weighted three-factor formula for all taxpayers except

certain manufacturers. Taxpayers whose principal activity is manufacturing may use a four-factor formula (sales x 2, plus property, plus payroll) for tax years beginning on or after January 1, 1995 and before January 1, 2020. Once elected, the manufacturer must continue to use the four-factor method for a total of three consecutive tax years covering at least 36 calendar months. “Manufacturing” means for the purposes of electing the four-factor apportionment method, combining or processing components or materials to increase their value for sale in the ordinary course of business. Manufacturing does not include construction, farming, processing natural resources and most power generation. A taxpayer may not use this option unless: (a) its tax liability is greater than it would have been for the previous year if the same apportionment method was used, **or** (b) the taxpayer has increased its combined property and payroll factor percentages in the state over its 1991 levels.

The election to use the four-factor method must be made in writing no later than the filing date of the first return to which the election will apply. Statutory authority for this elective method is in Section 7-4-10(B) NMSA 1978.

**Qualified manufacturers** electing the four-factor method should complete the statements on line 4a and make the following adjustments when calculating the New Mexico apportionment percentage on the Schedule S-Corp-A:

- LINE 3, Sales Factor. Divide column 2 by column 1 and multiply the result by 200, not 100.
- LINE 5, Average Percent. Divide the total factors on line 4 by 4.

#### **Elimination of Factor(s)**

If the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act do not fairly represent the extent of the taxpayer’s business activity in this state, the taxpayer may without prior approval or the department may require - if reasonable - the exclusion of any one or more of the factors (property, payroll or sales). This would include removal of one or more of the factors whose factor is insignificant. A factor is insignificant

if the denominator (column 1) is between 0% and 3% of net income. Use the number of significant factors included to compute the average. If you include an insignificant factor, attach an explanation.

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### **SCHEDULE S-Corp-B LINE INSTRUCTIONS**

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#### **LINES 1 - 9. ALLOCATED NON-BUSINESS INCOME TAXABLE TO OWNERS**

S-Corp-B must be used by entities to allocate income not connected to the entity’s regular trade or business.

Direct and indirect expenses related to allocated income must be deducted from the related income. Expenses related to allocated income are determined by the entity’s books and records. If the entity’s books and records do not reflect proper amounts for expenses, the entity may rely on other reasonable methods.

If you have an entry in column 2, you must also have an entry in column 1. The allocation cannot be correctly computed if both columns are not completed correctly.

Enter the following information on the appropriate lines of S-Corp-B to allocate income:

**Line 1. Allocated Non-business Dividends.** Column 2: Total amount in column 1 is allocated to New Mexico if the taxpayer’s commercial domicile is in New Mexico.

“Commercial domicile” means the principal place from which the taxpayer’s trade or business is directed or managed.

**Line 2. Allocated Non-business Interest.** Column 2: Total amount in column 1 is allocated to New Mexico if the taxpayer’s commercial domicile is in New Mexico.

**Lines 3 and 4. Allocated Non-business Rents and Royalties.** Column 2: The following net rent and royalty income should be allocated to New Mexico if it is non-business income:

1. Income from real property located in New Mexico;
2. Income from all tangible personal property if the taxpayer's commercial domicile is in New Mexico and the entity is not organized under the laws of or taxable in the state where the property is used;
3. Income from tangible personal property that is used in New Mexico;
4. Income from intangibles (patents, copyrights, franchises, trademarks and licenses) used in New Mexico, and
5. Income from intangibles if the taxpayer's commercial domicile is in New Mexico but the income from the intangible is not taxable in the state where the intangible is used.

A patent is used in New Mexico if it is used in production, fabrication, manufacturing or other processing in New Mexico.

A copyright is used in New Mexico if printing or other production occurs in New Mexico.

**Line 5. Allocated Net Profit or Loss on the Sale or Exchange of Non-business Assets.** Column 2: The net gain or loss from the sale or exchange of the following should be allocated to New Mexico if it is non-business income:

1. Real property located in New Mexico;
2. Tangible personal property located in New Mexico at the time it was sold;
3. Tangible personal property not located in New Mexico at the time it was sold if:
  - a. the entity's commercial domicile is within New Mexico, and
  - b. the gain was not taxable in the state where the tangible personal property was located, and
4. Intangible personal property if the entity's commercial domicile is in New Mexico.

**Line 6. Allocated Non-business Partnership Income (Loss).** Column 2: Nonbusiness partnership income should be allocated to New Mexico to the extent the partnership conducts business in this state.

**Line 7. Other Allocated Non-business Income (Loss).** Attach a sched-

ule to identify all other allocated income.

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## SCHEDULE S-Corp-C LINE INSTRUCTIONS

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### LINES 1 - 5. ALLOCATED AND APPORTIONED INCOME TAXED TO S CORPORATIONS

S corporations with federal taxable income must complete Schedule S-Corp-C. S corporations without federal taxable income should not complete this schedule.

**Line 1.** Enter net capital gains from federal Form 1120S, Schedule D, in column 1. Enter net capital gains allocated to New Mexico in column 2.

Gains and losses from sales and exchanges of real property in New Mexico are allocated to New Mexico.

Gains and losses from sales and exchanges of tangible personal property are allocated to New Mexico if:

1. the property was in New Mexico at the time of sale, or
2. the taxpayer's commercial domicile is in New Mexico and the taxpayer is not taxable in the state in which the property was located.

Gains and losses from the sale of intangible property shall be allocated to New Mexico if the taxpayer's commercial domicile is in New Mexico.

**Line 2.** Enter excess net passive income from the worksheet for line 22a in the instructions for federal Form 1120S in column 1. Enter excess net passive income allocated to New Mexico in column 2.

**Line 3.** Enter net recognized built-in gain from federal Form 1120S, Schedule D, in column 1. Enter net recognized built-in gain allocated to New Mexico in column 2.

**Line 5.** Divide the amount on line 4, column 2, by the amount on line 4, column 1 and multiply by 100. Carry the percentage to four decimal places and round to four decimal places (example, 22.4653%). Enter the percentage on line 5 of S-Corp-C and on line 3 of the Form S-Corp.

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## CONSISTENCY IN REPORTING

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An entity is required to be consistent in:

- classifying income as allocatable or apportionable;
- the valuation of property and its inclusion in the property factor;
- the treatment of compensation for the payroll factor; and
- the exclusion or inclusion of receipts in the sales factor for returns filed in all states.

Any change or inconsistency from prior-year returns must be disclosed in a statement attached to the return. Identify the amounts and reasons for the changes or inconsistencies.

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## PETITION PROCEDURE OPEN TO TAXPAYER

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If the above procedures for allocation and apportionment do not fairly represent the extent of the taxpayer's business activity in New Mexico, the taxpayer may petition, or the Secretary of Taxation and Revenue may require, that another method be used to apportion or allocate all or any part of the taxpayer's business income.

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## AFTER YOU FILE YOUR RETURN

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If your return shows an overpayment and you have requested that all or a portion of the overpayment be refunded to you, please allow at least 12 weeks for processing before contacting the Department. Processing time will vary according to when you file your return. Occasional computation errors in a tax return will delay processing or result in adjustments to your refund or the amount you owe. If you disagree with any adjustment made by the Department, you should follow the procedures in publication FYI-400, *Tax Audits and Protest Procedures - Your Rights as a Taxpayer*.

At any time after filing your return, it may be subject to further review, verification or correction. The State of New Mexico, pursuant to reciprocal information exchange agreements, exchanges information with the Internal Revenue Service, certain other state agencies and taxing authorities in other

states. If your tax return is adjusted or an assessment of additional tax is issued, you will be provided a description of your rights as a taxpayer. Our publication FYI-400, *Tax Audits and Protest Procedures - Your Rights as a Taxpayer*, describes in detail how to dispute an adjustment or assessment made by the Department through either the claim for refund procedure or the protest procedure. Publication FYI-400 is available by contacting your local district tax office or by downloading from the Department website at [www.tax.newmexico.gov](http://www.tax.newmexico.gov). Click on "Forms and Publications".

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## AVAILABLE CREDITS

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Use Schedule S-Corp-CR to claim any of the non-refundable credits listed below that may be taken against New Mexico corporate income tax reported on Form S-Corp. You may also claim on this schedule any portion of approved Film Production Tax Credit or Renewable Energy Production Tax Credit that is claimed against the tax liability reported on this return. Enter the total credits on line 5, Form S-Corp. Be sure to attach the appropriate backup documentation to support the credit taken and attach Schedule S-Corp-CR to your 2011 New Mexico Sub-Chapter S Corporate Income and Franchise Tax Return, Form S-Corp. To calculate the amount that may be claimed, refer to the claim form or supporting instructions for the credit. The sum of credits claimed on Schedule S-Corp-CR may not exceed the income tax claimed on line 4, Form S-Corp. **For a complete description of the credits, see the S-Corp instructions and FYI-106, *Claiming Tax Credits for CRS Taxes and Business Related Income*.**

**Line 1. Corporate-Supported Child Care Tax Credit:** Corporations providing or paying for licensed childcare services for employees' children under 12 years of age may deduct 30% of eligible expenses from their corporate income tax liability for the tax year in which the expenses occur, not to exceed \$30,000. An amount exceeding the tax liability will not be refunded, but may be carried forward for three consecutive years.

To claim the credit, complete Form CIT-3, *Corporate Child Care Credit*, and **enter on line 1 of Schedule S-Corp-CR the amount claimed.** Both forms must be submitted with Form S-Corp.

**Line 2. Cultural Property Preservation Credit.** The credit for preservation of cultural property is 50% of the costs of a project for the restoration, rehabilitation or preservation of cultural property listed on the official New Mexico Register of Cultural Properties, not to exceed \$25,000. Beginning in 2009, if the property is also located in an arts and cultural district certified by the state or a municipality pursuant to the Arts and Cultural District Act, a maximum of \$50,000 credit will be allowed.

The Cultural Properties Review Committee must approve the project plan before the restoration begins and certify that the completed project conforms to the plan.

To claim this credit against any corporate income tax due, complete **Form CIT-4, *New Mexico Preservation of Cultural Property Credit***, and attach it to your Form S-Corp along with a copy of the Part 2 approval from the New Mexico Cultural Properties Review Committee and the approval from the New Mexico Arts and Cultural Districts Coordinator, if applicable. **Enter the amount claimed on line 2 of Schedule S-Corp-CR.**

**Line 3. Business Facility Rehabilitation Credit.** Credit is available for some pre-approved costs of restoration, rehabilitation or renovation of a qualified business facility located in a New Mexico enterprise zone. The facility must be suitable for use and put into service in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation project. This credit is for 50% of the pre-approved costs and it may not exceed \$50,000.

Contact the State Enterprise Zone Program Officer to obtain the New Mexico Economic Development Department's advance approval and certification for your project.

Once certification is received from the New Mexico Enterprise Zone Program Officer, attach a completed Form CIT-5, *Qualified Business Facility Rehabilitation*, Schedule S-Corp-CR, and the certificate of completion issued by the New Mexico Enterprise Zone Program Officer to your Form S-Corp. **Enter the amount claimed on line 3 of Schedule S-Corp-CR.**

**Line 4. Intergovernmental Business Tax Credit.** A corporation engaged in growing, processing or manufacturing may receive a credit for up to 50% of all taxes imposed by an Indian nation, tribe or pueblo located wholly or partly in New Mexico on income from new business activity on Indian land. Exception: A tax eligible for credit under Section 7-29C-1 NMSA 1978, or any other intergovernmental business tax credit that provides a similar credit may not be counted for intergovernmental business tax credit. Such taxes are oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax, oil and gas ad valorem production tax on products severed from Indian tribal land, or a tax imposed on the privilege of severing products from tribal land. The law limits the credit to income from a new business established on tribal land after July 1, 1997. A new business is a manufacturer or processor occupying a new business facility or a grower who begins operations in New Mexico after July 1, 1997.

To claim this credit against any corporate income tax due, attach a **statement establishing entitlement to the credit with proof of payment of tax to an Indian nation, tribe or pueblo** on which the credit is based to your Form S-Corp along with Schedule S-Corp-CR. **Enter the amount claimed on line 4 of Schedule S-Corp-CR.**

**Line 5. Rural Job Tax Credit.** A Rural Job Tax Credit is available for employers in rural areas of New Mexico who qualify for Job Training Incentive Program assistance. Eligible employers may earn the rural job tax credit for each qualifying job created after July 1, 2000. The employer must certify the wages paid to each eligible employee. See Form RPD-41247, *Certificate of Eligibility for the Rural Job Tax Credit*,

on the TRD website, [www.tax.new-mexico.gov](http://www.tax.new-mexico.gov). Pre-approval is required.

Calculate the Rural Job Tax Credit at 6-1/4% of the first \$16,000 in wages paid for each qualifying job for no more than four qualifying periods in a Tier 1 area, and no more than two qualifying periods in a Tier 2 area. A rural area excludes Albuquerque, Corrales, Farmington, Las Cruces, Los Alamos County, Los Ranchos, Rio Rancho, Santa Fe, and Tijeras, and a ten-mile zone around these municipalities. Tier 2 areas are limited to Alamogordo, Carlsbad, Clovis, Gallup, Hobbs, and Roswell. Tier 1 is any rural area not part of a Tier 2 area. A qualifying period is 12 months.

The holder of the Rural Job Tax Credit document may apply all or part of the credit against the holder's combined state gross receipts, compensating and withholding taxes, or personal or corporate income tax.

To learn more about JTIP assistance, visit the New Mexico Economic Development Department website at [www.edd.state.nm.us](http://www.edd.state.nm.us) or call (505) 827-0300 or (800) 374-3061.

To apply for this credit, complete Form RPD-41238, *Application for Rural Job Tax Credit*, attach a notarized completed Form RPD-41247, *Certificate of Eligibility for the Rural Job Tax Credit*, for each qualified job you claim in the eligible period, and send it to the address on the form.

Once approval is received from TRD, complete Form RPD-41243, *Rural Job Tax Credit Claim Form*, and submit it with your Form S-Corp along with Schedule S-Corp-CR. **Enter on line 5 of Schedule S-Corp-CR the amount claimed.**

**Line 6. Technology Jobs (Additional and Basic) Tax Credit.** The Technology Jobs Tax Credit is 4% of qualified expenditures for conducting research and development. An additional 4% credit is available if the taxpayer increases its annual payroll by at least \$75,000 for every \$1 million in qualified expenditures it claims in a tax year. The basic and additional credits S-Corp

double for businesses in rural areas.

The taxpayer must make the eligible expenditures for research and development at a qualified facility. For a list of qualified expenditures, see the instructions for Form RPD-41239, *Application for Technology Jobs Tax Credit*.

The holder of the Technology Jobs Tax Credit document may apply all or part of "basic" credits against the holder's combined state gross receipts, compensating and withholding taxes. If you have earned "additional" credits, you may claim that amount against personal or corporate income taxes. Pre-approval is required.

To apply for the basic and additional credit, complete Form RPD-41239, *Application for Technology Jobs Tax Credit*, and send it along with documentation of the expenditures and payroll increase to the address on the form.

To claim an approved technology jobs tax credit, complete Form RPD-41244, *Technology Jobs Tax Credit Claim Form*, and submit it with your Form S-Corp and Schedule S-Corp-CR. **Enter the amount claimed on line 6 of Schedule S-Corp-CR.**

"Additional" credits may be applied towards corporate income tax due on Form S-Corp.

NOTE: Taxpayers who claim the research and development small business tax credit are ineligible to claim the investment tax credit or the technology jobs tax credit for the same reporting period.

**Line 7. Electronic Card-Reading Equipment Tax Credit.** New Mexico has a one-time income tax credit for businesses that purchase electronic identification card-readers for age verification. A business may claim this credit on a New Mexico personal income tax return or corporate income and franchise tax return if:

- The business is licensed to sell cigarettes, tobacco products or alcoholic beverages, *and*
- The business has purchased, and is using, equipment that electronically reads identification cards to

verify age.

The credit amount is \$300 for each business *location* using electronic identification card-readers. The owner, member or partner of a pass-through entity may claim a credit in proportion to the owner's interest in the partnership or other business association. The total credit claimed by all members of the partnership or association may not exceed \$300 for each business location.

Claim this non-refundable credit in the tax year the equipment was purchased and put into use. You cannot carry excess amounts forward or back into another tax year.

To claim the credit, complete and have notarized Form RPD-41246, *Income Tax Credit for Electronic Identification Card Reader, Purchase and Use Statement*. Enter the amount of credit on Schedule S-Corp-CR. Submit the statement and the S-Corp-CR with your S-Corp return. When the credit (\$300) is split among spouses, owners, partners, or other business associations, each claimant must show the division of the total credit (\$300 per business location) on page 2 of Form RPD-41246. **Enter on line 7 of Schedule S-Corp-CR the amount claimed.**

**Line 8. Job Mentorship Tax Credit.** A taxpayer owning a New Mexico business may claim a Job Mentorship Tax Credit for employing qualified students who take part in a career preparation education program. The credit equals 50% of gross wages paid to a maximum of ten qualified students. The business must employ the students for up to 320 hours each during the tax year. A taxpayer may not claim a credit for one qualified individual for more than three tax years. The maximum credit for one tax year is \$12,000.

Obtain a Form RPD-41280, *Job Mentorship Tax Credit Certificate*, from the secondary school operating the career preparation education program for each qualified student you employ.

To claim this credit against corporate income tax, complete Form RPD-41281, *Job Mentorship Tax Credit Claim Form*, and attach it to your Form S-Corp with

Schedule S-Corp-CR. Also, attach a Form RPD-41280, *Job Mentorship Tax Credit Certificate*, for each qualified student employed during the tax year. You may carry unused credit forward for three consecutive years. **Enter on line 8 of Schedule S-Corp-CR the amount claimed.**

A partnership or other business association of which the taxpayer is a member may claim a credit in proportion to the taxpayer's interest in the partnership or association.

**Line 9. Land Conservation Incentives Credit.** Corporations who donate land, or interest in land, to private or public conservation agencies for conservation purposes may claim a credit from personal or corporate income tax, equal to 50% of the fair market value of the land transferred up to \$100,000 for donations made prior to January 1, 2008, and \$250,000 for donations made on or after January 1, 2008. Additionally for a donation made on or after January 1, 2008, the credit may be sold, exchanged or transferred in increments of \$10,000 or more. Only one credit may be claimed in a tax year.

To apply for this credit contact the New Mexico Energy, Minerals and Natural Resources Department (EMNRD) who certifies the eligibility of the donation.

Once the certificate of eligibility is received from EMNRD, complete Form RPD-41335, *Land Conservation Incentives Tax Credit Application*, and submit to TRD with a copy of the certificate of eligibility.

Once approval is received from TRD, claim this credit by completing Form RPD-41282, *Land Conservation Incentives Credit Claim Form*, and attach it to your Form S-Corp with Schedule S-Corp-CR. **Enter on line 9 of Schedule S-Corp-CR the amount claimed.** Also, attach the letter received from EMNRD certifying treatment as a qualified donation. Unused credit may be carried forward for up to 20 consecutive years following the year in which the qualified donation occurred.

**Line 10. Affordable Housing Tax Credit.** Beginning January 1, 2006,

the Mortgage Finance Authority (MFA) issues vouchers to persons who have invested in affordable housing projects. The vouchers, good for up to 50% of the investment, may be sold or transferred, provided the MFA is notified of the transfer and a voucher has been re-issued to the transferee. "Affordable housing" covers land acquisition, construction, building acquisition, remodeling, improvement, rehabilitation, conversion or weatherization for single-family residences approved by MFA and multi-family residential housing located in a county of fewer than 100,000 persons.

To apply for the credit, contact the Mortgage Finance Authority for approval of the project and issuance of the vouchers.

After receiving the vouchers from MFA, the taxpayer may apply them as a credit against gross receipts, compensating, withholding, personal income or corporate income tax liabilities and carry unused credits forward for five years.

To claim the credit, complete and attach Form **RPD-41301**, *Affordable Housing Tax Credit Claim Form*, to your Form S-Corp along with Schedule S-Corp-CR. **Enter the amount claimed on line 10 of Schedule S-Corp-CR.**

**Line 11. Blended Biodiesel Fuel Tax Credit.** Beginning January 1, 2007 but not after December 31, 2012, a rack operator or supplier who is required to pay the special fuel excise tax and who files a New Mexico personal or corporate income tax return may claim a credit against the tax due on the return for each gallon of blended biodiesel fuel on which that person paid, or would have paid, the special fuel excise tax in the tax year, but for certain deductions allowed for special fuel sold or the treaty exemption for North Atlantic Treaty Organization use.

To qualify for the credit, a taxpayer must be a registered New Mexico supplier who files Form RPD-41306, *Combined Fuel Tax Report*, reporting qualifying biodiesel fuel receipts.

To apply for the credit complete Form RPD-41322, *Blended Biodiesel Fuel Tax Credit Application*, to report

qualifying biodiesel fuel receipts and establish eligibility for the credit, and submit to TRD.

Once approval is granted for eligibility, to claim the credit, complete Form RPD-41340, *Blended Biodiesel Fuel Tax Credit Claim Form*, and attach it to your Form S-Corp with Schedule S-Corp-CR. **Enter the credit claimed on Schedule S-Corp-CR, line 11.**

**Line 12. Sustainable Building Tax Credit.** A credit is available for the construction in New Mexico of a sustainable building or for the renovation of an existing building in New Mexico into a sustainable building or the permanent installation of manufactured housing, regardless of where the housing is manufactured, that is a sustainable building after January 1, 2007. The building may be for residential or commercial use, but is not available for a building owned by an entity that does not file a New Mexico corporate or personal income tax return. The credit is available for residential and commercial buildings, after the construction, installation or renovation of the sustainable building is complete. To qualify for the tax credit, the building must have achieved a silver or higher certification level in the LEED green building rating system or the build green New Mexico rating system.

Effective June 19, 2009, owners of qualified multifamily residential buildings may apply for a portion of the sustainable building tax credits allocated for sustainable commercial buildings. Tax credit allocated for sustainable commercial buildings can be used for multifamily residential buildings when the entire amount of the \$5 million in sustainable building tax credits available for residential buildings has been allocated, and if any portion of the \$5 million in sustainable building tax credits available for commercial buildings remains.

To apply for this credit, you must first obtain a certificate of eligibility by contacting the New Mexico Energy, Minerals and Natural Resources Department.

Once the certificate of eligibility is issued, you must promptly complete and

submit Form RPD-41327, *Sustainable Building Tax Credit Approval*, along with a copy of the certificate of eligibility, to the Taxation and Revenue Department before claiming the credit on your New Mexico income tax return.

To claim this credit against any corporate income tax due, complete and attach **RPD-41329, *Sustainable Building Tax Credit Claim Form***, to Form S-Corp with S-Corp-CR. **Enter the amount claimed on line 12 of Schedule S-Corp-CR.**

**Line 13. Advanced Energy Tax Credit.** A qualified electricity generating facility located in New Mexico may be eligible to apply for and claim the advanced energy tax credit (advanced energy income tax credit, advanced energy corporate income tax credit and the advanced energy combined reporting tax credit). The amount of the credit is 6% of the eligible generation plant costs. The aggregate amount of tax credit that may be claimed with respect to a qualified generating facility is limited to \$60,000,000.

The electric generating facility and the claimant must apply for a certificate of eligibility from the New Mexico Environment Department.

To obtain approval, submit a completed Form RPD-41333, *Advanced Energy Tax Credit Application*, a certificate of eligibility and other information TRD requires to determine the amount of tax credit allowed. The application must be submitted within one year following the end of the calendar year in which the eligible generation plant costs are incurred. The right to claim the credit may be allocated to other taxpayers who are interest owners in the qualified generating facility. The *Notice of Allocation of Right to Claim Advanced Energy Tax Credits* is required to be attached to Form RPD-41333 to allocate the credit to interest owners.

Once approved, you may claim this credit by completing Form RPD-41334, *Advanced Energy Tax Credit Claim Form*, and attaching it to your Form S-Corp with Schedule S-Corp-CR and a copy of the certificate of eligibility. **Enter the amount claimed on line**

### **13 of Schedule S-Corp-CR.**

**Line 14. Agricultural Water Conservation Tax Credit.** A taxpayer may claim a credit against the taxpayer's personal or corporate tax liability for expenses incurred by the taxpayer for eligible improvements in irrigation systems or water management methods. Eligible improvements means an improvement that is:

- made on or after January 1, 2008;
- consistent and complies with a water conservation plan approved by the local soil and water conservation district in which the improvement is located; and
- primarily designed to substantially conserve water on land in New Mexico that is owned or leased by the taxpayer and used by the taxpayer or the taxpayer's lessee to produce agricultural products, harvest or grow trees, or sustain livestock.

The amount of the credit is 35% of eligible expenses incurred in calendar year 2008 and 50% of eligible expenses incurred in subsequent years through December 31, 2012. The total credit allowed in a tax year may not exceed \$10,000.

To claim the agricultural water conservation tax credit, you must first obtain a certificate of eligibility from the local Soil and Water Conservation Commission within the district which encompasses the land upon which the improvement is or will be located. To find your local Soil and Water Conservation Commission District, visit [www.nmda.nmsu.edu/natural-resources/soil-and-water-conservation-program](http://www.nmda.nmsu.edu/natural-resources/soil-and-water-conservation-program) or call (575) 646-3490.

To claim the credit against any corporate income tax due, complete **Form RPD-41319, *Agricultural Water Conservation Tax Credit Claim Form***, and attach it to your Form S-Corp with Schedule S-Corp-CR. **Enter the amount claimed on line 14 of Schedule S-Corp-CR.**

**NOTE:** The agricultural water conservation tax credit provisions are repealed effective January 1, 2013.

**Line 15. Geothermal Ground-Coupled Heat Pump Tax Credit.** A credit is available for a taxpayer who has purchased and installed a geothermal ground-coupled heat pump after January 1, 2010, but before December 31, 2020. To qualify for the tax credit, the taxpayer must install the pump in a residence, business or agricultural enterprise in New Mexico owned by that taxpayer or by a partnership or other business association of which the taxpayer is a member. Unused credit may be carried forward for a maximum of ten consecutive years following the tax year for which the credit was approved.

To qualify for this credit, you must first obtain a certificate of eligibility from the New Mexico Energy, Minerals and Natural Resources Department.

To claim this credit against any corporate income tax due, complete and attach **RPD-41346, *Geothermal Ground-Coupled Heat Pump Tax Credit Claim Form***, to Form S-Corp with Schedule S-Corp-CR. **Enter the amount claimed on line 15 of Schedule S-Corp-CR.**

**Line 16. Agricultural Biomass Income Tax Credit.** A credit is available for a taxpayer who owns a dairy or feedlot and who files a personal or corporate income tax return for a taxable year beginning on or after January 1, 2011 and ending prior to January 1, 2020. TRD may allow a credit equal to \$5 per wet ton of agricultural biomass transported from the taxpayer's dairy or feedlot to a facility that uses agricultural biomass to generate electricity or make biocrude or other liquid or gaseous fuel for commercial use.

To qualify for this credit, you must first obtain a certificate of eligibility from the Energy, Minerals and Natural Resources Department (EMNRD).

Once the certificate of eligibility is issued by EMNRD, obtain approval from TRD by submitting a completed Form RPD-41362, *Agricultural Biomass Income Tax Credit Approval*, and the certificate of eligibility to TRD. TRD will approve the credit and return the approved form to the owner or holder.

Once approved, you may claim this

credit by completing Form RPD-41361, *Agricultural Biomass Income Tax Credit Claim Form*, and attaching it to your Form S-Corp with Schedule S-Corp-CR. **Enter the amount claimed on line 16 of Schedule S-Corp-CR.**

**Line 17. Film Production Tax Credit (applied to tax due).** The film production tax credit provides a credit for an eligible film production company. The amount of the credit is equal to 25% of direct production and direct postproduction expenditures. Direct production expenditures must be directly attributable to the production in New Mexico of a film or commercial audiovisual and both direct and post production expenditures must be subject to taxation by the State of New Mexico. Excluded from the credit are costs for which the film production company has already issued a nontaxable transaction certificate under Section 7-9-86 NMSA 1978.

To obtain approval for the credit, first apply to the New Mexico Film Office of the Economic Development Department (EDD). When it receives approval from EDD, the film production company may apply for Taxation and Revenue Department approval of the credit. See the *Application for Film Production Tax Credit*, Form RPD-41229.

Once approved, you may claim the credit by filing your personal or corporate income tax return. To claim the credit against tax due on Form S-Corp, complete Schedule S-Corp-CR and attach it to your S-Corp return. Complete lines 17 and 17a on Schedule S-Corp-CR using the following instructions. Also, complete line 23, Form S-Corp, if applicable.

**Line 17, Schedule S-Corp-CR.** Enter the amount of approved film production tax credit that you want to be applied to your tax due on this return. If you are an owner or affiliate of the film production company that was approved for the credit, do not enter more than that portion of approved credit that was distributed to you at the time the film production company received TRD approval for the credit. If you are not sure what your distributed amount is, please contact the film production company. Any addi-

tional credit that you would like to be refunded to you should be reported on line 23, of the Form S-Corp.

**Line 17a, Schedule S-Corp-CR.** Enter the total amount of film production tax credit for which you have been approved or that has been distributed to you by a film production company that you own or are affiliated with. Do not reduce the amount reported on line 17a by the amount that you are requesting to have applied to the tax due on line 17 of this schedule.

NOTE: The amount of film production tax credit you may claim against your tax due on this return and the amount that you may receive as a refund (based on your claim for the film production tax credit on line 23, of the Form S-Corp) are subject to certain limitations governing the payment of film production tax credit claims. See the instructions for the film production tax credit claim form for details regarding these limitations and how your claim may be impacted.

**Line 18. Renewable Energy Production Tax Credit (applied to tax due).** Personal income and corporate income taxpayers may receive credit for producing electricity by solar light or heat, wind or biomass for 10 years following the date the qualified energy generator begins producing electricity. A qualifying energy generator means a facility with at least one megawatt generating capacity located in New Mexico that produces electricity using a qualified energy resource and that sells that

electricity to an unrelated person.

To qualify, the taxpayer must either hold title to a qualified energy generator that first produced electricity on or before January 1, 2018, or lease property upon which a qualified energy generator operates from a county or municipality, under the authority of an industrial revenue bond. EMNRD must first approve the qualified energy generator and the business claiming the credit.

When approval is received from EMNRD, claim the credit by attaching to Form S-Corp-1, Schedule S-Corp-CR, a completed Form RPD-41227, *Renewable Energy Production Tax Credit Claim Form*, the certificate of eligibility issued by EMNRD, the Allocation Notice approved by EMNRD if applicable, and documentation of the amount of electricity produced by the facility in the tax year. The credit may be deducted from the taxpayer's corporate or personal income tax liability for which the credit is claimed. If the amount of the tax credit exceeds the taxpayer's corporate or personal income tax liability for the tax year:

1. the excess may be carried forward for 5 years, or
2. if the tax credit was issued with respect to a qualified energy generator that first produced electricity using a qualified energy resource on or after October 1, 2007, the excess shall be refunded to the taxpayer.

**Enter on line 18 of Schedule S-Corp-CR only the amount claimed against tax due.** Any amount to be refunded is reported on line 21, Form S-Corp.

**Reminder:**  
**Write your correct federal  
employer identification number (FEIN)  
on ALL forms, schedules, payments  
and correspondence.**

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# New Mexico Taxpayer Bill of Rights

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Most tax transactions happen without incident. In an imperfect world, however, occasional disagreements occur through misunderstanding, mathematical error, missed deadlines, misplaced papers, high volume of transactions and many other situations. Over the years the Legislature and the Department have established ways to handle difficulties according to the provisions of the state tax code. Following are some of your rights. Should you wish to consult the law itself, you will find it in Sections 7-1-4.1 through 4.3 NMSA 1978:

- The right to available public information and prompt and courteous tax assistance;
- The right to representation and advice by counsel or other qualified representatives at any time during your interactions with us according to provisions of Section 7-1-24 NMSA 1978;
- The right to have audits, inspections of records and meetings conducted at a reasonable time and place according to Sec. 7-1-11 NMSA 1978;
- The right to simple, non-technical information explaining procedures, remedies and rights during audit, protest and collection proceedings under the Tax Administration Act;
- The right to receive an explanation of audit results and the basis for audits, assessments or denials of refunds that identify tax, interest or penalty due;
- The right to seek review through formal or informal proceedings of findings or unfavorable decisions arising from determinations during audit or protest procedures according to Sec. 7-1-24 NMSA 1978;
- The right to have your tax information kept confidential unless otherwise specified by law in Sec. 7-1-8 NMSA 1978;
- The right to an abatement of an assessment of taxes incorrectly, erroneously or illegally made (Sec. 7-1-28 NMSA 1978) and a right to seek a compromise of an asserted tax liability. When the Secretary

of Taxation and Revenue in good faith doubts that you owe us what we claim you owe, you also have the right to seek a compromise if one exists in your particular case (Sec. 7-1-20 NMSA 1978);

- The right to clear information of the consequences if a tax assessment is not paid, secured, protested or otherwise provided for according to Sec. 7-1-16 NMSA 1978. If you become a delinquent taxpayer, upon notice of delinquency you have the right to timely notice of collection actions that require sale or seizure of your property under the Tax Administration Act, and
- The right to pay your tax obligations by installment payment agreements according to the provisions of Sec. 7-1-21 NMSA 1978.

## **Confidentiality Provisions:**

Statutes regulating the confidentiality of your taxes continue to be strict. Sec. 7-1-8 NMSA 1978 requires the department to answer questions about whether a taxpayer is registered to do business in this state or is registered for other tax programs, but it does not allow employees to reveal whether you have filed a return. A hearing officer's written ruling on questions of evidence or procedure according to Sec. 7-1-24 NMSA 1978 may be made public, but not the name and identification number of the taxpayer requesting the ruling. Now included in public record are the monthly gasoline tax reports of numbers of gallons of gasoline and ethanol-blended fuels received and deducted, and the tax paid by each filer or payer of the tax. Identities of rack operators, importers, blenders, suppliers or distributors and the number of gallons of gasoline and other fuels are public record. The department may make known to the Gaming Control Board the tax returns of license applicants and their affiliates.

## **Audit Provisions:**

We must provide you with written, dated notice that an audit

is about to begin on a specific date, and the notice must tell you which tax programs and reporting periods will be covered. We must issue a second notice, which states any outstanding records or books of account requested and not yet received, between 60 and 180 days after the audit begins. If you do not produce the records within 90 days, the department can issue an assessment of tax on the basis of the information as it stands. If you need additional time, you must submit a specific request in writing. Interest on outstanding liabilities accrues if the department does not issue an assessment within 180 days of the notice of outstanding records or books, or within 90 days after time has expired under your request for additional time; however, you are entitled to an abatement of interest for the period of time after you have complied with department requests and the department has not acted on the audit.

## **Administrative Hearing Procedures:**

A department hearing officer may not engage as an employee in enforcing or formulating general tax policy other than to conduct hearings. You may request the Secretary to determine if a hearing officer's activities have affected his or her impartiality, and the Secretary may assign the case to another hearing officer. Hearing officers may not communicate unilaterally about a matter you have protested while that matter is still pending. The Secretary may appoint another hearing officer if that occurs. You may request a written ruling on any contested question of evidence in matters in which you have filed a pending written protest. You also may request that two or more protests on related issues be combined and heard jointly, and the hearing officer shall grant the request unless it creates an unreasonable burden on the department.

## **Credit Claims:**

The department has 180 days from the filing date to approve or deny a statutory tax credit. If it does not act,

the credit is approved. The Secretary decides whether a refund of tax due you may be offset against your other tax liabilities, and you will receive notice that the refund will be made accordingly. You are entitled to interest until the tax liability is credited with the refund amount. Please see the paragraph above on "Audit Provisions" for interest due you if the department does not offset a refund or credit against your other tax liabilities within the prescribed time. The department may make a direct refund of overpaid taxes to the taxpayer without requiring the taxpayer to file a refund claim. The department does not have

to pay interest on credits or refunds if it applies the amount to a tax interception program, to an estimated payment, or to offset prior liabilities of the taxpayer.

**Awarding of Costs and Fees:**

If you prevail in an administrative or court proceeding brought by you or against you after July 1, 2003, under the Tax Administration Act, you will receive a judgment or a settlement for reasonable administrative costs connected to the action.

**Penalty:**

The department may not assess penalty against you if you fail to pay tax when due because of a mistake of law made in good faith and on reasonable grounds. If the Secretary determines that it is unfair to hold a spouse or former spouse liable for payment of unpaid taxes, the Secretary may decline to take action against the spouse or former spouse of the person who actually owes the tax. In extreme cases of delinquency under Sec. 7-1-53 the department may enjoin a taxpayer from continuing in business after a hearing and until the delinquency is cleared.

# **YOU CAN ELECTRONICALLY PAY THROUGH THE INTERNET.**

## **INTERNET SERVICES:**

- **ELECTRONIC CHECK**
- **TAX PAYMENTS USING VISA, MASTERCARD, AMERICAN EXPRESS OR DISCOVER CARDS**
- **ASK A QUESTION**
- **TAP - TAXPAYER ACCESS POINT -  
Find the status of your refund,  
Manage your tax account history, or  
Register your business.**

**Visit the Department web site at**

**[www.tax.newmexico.gov/Online-Services/Pages/Home.aspx](http://www.tax.newmexico.gov/Online-Services/Pages/Home.aspx)**

\* 2.49% convenience fee added for credit card payments

## **Contact our local offices . . .**

**Local Taxation and Revenue Department Offices:** Local tax offices can provide full service and information about New Mexico's taxes, programs and forms and specific information about your filing situation. If you have questions or require additional information, you may contact your local Taxation and Revenue Department Office.

### **ALBUQUERQUE:**

Taxation & Revenue Department  
Bank of the West Building  
5301 Central Ave., NE  
P.O. Box 8485  
Albuquerque, NM 87198-8485  
Telephone: **(505) 841-6200**

### **ROSWELL:**

Taxation & Revenue Department  
400 North Pennsylvania, Suite 200  
P.O. Box 1557  
Roswell, NM 88202-1557  
Telephone: **(575) 624-6065**

### **FARMINGTON:**

Taxation & Revenue Department  
3501 E. Main Street, Suite N  
P.O. Box 479  
Farmington, NM 87499-0479  
Telephone: **(505) 325-5049**

### **SANTA FE:**

Taxation & Revenue Department  
1200 South St. Francis Drive  
P.O. Box 5374  
Santa Fe, NM 87502-5374  
Telephone: **(505) 827-0951**

### **LAS CRUCES:**

Taxation & Revenue Department  
2540 S. El Paseo, Building #2  
P.O. Box 607  
Las Cruces, NM 88004-0607  
Telephone: **(575) 524-6225**

## ***In addition . . .***

You may order forms and instructions by calling (505) 827-2206 (not a toll-free number), or you may write to:

New Mexico Taxation and Revenue Department  
P.O. Box 2629  
Santa Fe, NM 87504-2629.

Forms, instructions and general information brochures are available on the Department's Internet home page.

Our address is:

**[www.tax.newmexico.gov](http://www.tax.newmexico.gov)**